



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200818-0221]

RIN 0648-BJ63

**Fisheries Off West Coast States; Delay Implementation of West Coast Groundfish
Electronic Monitoring Program**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would revise regulations to delay implementation of the Electronic Monitoring (EM) Program for the West Coast Groundfish Trawl Rationalization Program. This action would delay implementation of the EM Program to January 1, 2022. NMFS is proposing this change to provide additional time for industry and prospective service providers to prepare for implementation, as it is expected to strengthen Council and industry support for the EM program and may increase participation when it is implemented in 2022.

DATES: Comments on this proposed rule must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0116

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2020-0116, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Barry Thom, c/o Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region Web site at:

<http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html> and at the

Pacific Fishery Management Council's website at

<http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/>.

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206-526-4656, or e-mail: *colin.sayre@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

At the recommendation of the Pacific Coast Fishery Management Council (Council), NMFS published a final rule on June 28, 2019 (84 FR 31146) that authorized the use of EM in place of human observers to meet requirements for 100-percent monitoring at sea for catcher vessels in the groundfish trawl catch share fishery (Trawl Rationalization Program). EM video systems are used to record catch and discards by the vessel crew while at sea. Vessel operators are responsible for recording catch and discards in a logbook, which is then used to debit individual fishing quota (IFQ) accounts and cooperative allocations. After an EM vessel completes a fishing trip, the vessel operator submits the video data to their third party EM service provider for analysis to be used to audit the vessel operator's self-reported discard logbooks. The June 2019 final rule established requirements for vessel owners and operators and EM service providers participating in the EM program, and for first receivers receiving catch from EM trips. The EM program is set to begin January 1, 2021, and NMFS has been working on implementation of the program in preparation for the start date.

At its April and June 2020 meetings, the Council recommended that NMFS delay implementation of the EM program to January 1, 2022, to provide more time to prepare. Specifically, the Council wants to provide more time for industry and the Pacific States Marine Fisheries Commission (PSMFC) to develop a model for industry to fund PSMFC for review of video from their fishing trips. PSMFC has been reviewing video data from

the experimental EM Exempted Fishing Permit (EFP) program, funded by NMFS, since 2015. Members of the fishing industry and the Council would like PSMFC to continue participating as a NMFS-certified, third party service provider under the EM regulatory program. They believe that PSMFC can provide video review services at lower cost than private sector service provider companies. PSMFC is eligible to apply for an EM provider permit under the regulations, but remains concerned that accepting funds directly from industry would undermine the apparent impartiality of its role in data collection programs on the west coast. The Council has requested that NMFS delay implementation of the regulatory program to provide more time for the industry and PSMFC to address these concerns before PSMFC applies to be a service provider in 2022. The Council believes that a delay is necessary to increase industry buy-in and for success of the EM program at reducing monitoring costs for the fishery.

At its April 2020 meeting, the Council initiated a regulatory amendment to consider changes to the EM program under Section 6.2 of the Pacific Coast Groundfish Fishery Management Plan, which allows the Council to recommend management measures in two meetings. The Council adopted for public review several mostly administrative changes to the EM program, including delaying implementation of the EM program until January 1, 2022. The Council finalized its recommended changes to the EM program regulations at its June 2020 meeting. NMFS has taken up the Council's recommendation to delay the EM program in this rulemaking, and, to expedite completion of this rulemaking before January 2021, has postponed consideration of the other regulatory changes to a separate rulemaking to be completed at a later date.

In this rule, NMFS is proposing to implement the Council's recommendation to delay implementation of the EM program to 2022, as it would strengthen Council and industry support for the EM program and may increase participation when it is implemented in 2022. Delaying implementation of the EM program could postpone the benefits that the EM program is expected to provide to vessel owners, as detailed in the June 2019 final rule, for an additional year. NMFS intends to maintain the EM EFP program through 2021, contingent on funding, and to allow additional vessels to join. Vessels in the EFP program have been able to use EM in place of human observers and benefit from its cost savings while NMFS collected information to use in developing the regulations for and implementing the EM program. Maintaining the EFP in 2021 would allow vessels to continue to use EM in place of observers and mitigate potential negative economic effects of delaying the regulations.

Thus far in the EM EFP program, NMFS has funded review and storage of the video and reporting of the data using Federal funds provided to PSMFC through a grant. Although NMFS intends to renew the EFP for 2021, NMFS has not identified funding for these costs beyond 2020. If NMFS does not receive Federal funds to pay for the video review, storage, and reporting in 2021, the EFP could end, leaving vessel owners with no alternative to human observers in 2021 under this proposed rule. This would result in higher monitoring costs relative to maintaining the 2021 implementation date for the regulations for vessels that would use EM if available.

If Federal funding is not available for the EFP in 2021, vessel owners could instead pay PSMFC or a private, third party EM service provider directly for the video review, storage, and reporting for the EM EFP. Per NMFS's Procedural Directive on

“Cost Allocation in Electronic Monitoring Programs for Federally Managed U.S. Fisheries,” the video review, storage, and reporting are sampling costs that are an industry responsibility. NMFS has funded these costs for the EM EFP while Federal funds have been available, but participating vessels could take responsibility for these costs in the EFP to continue to use EM in 2021. This third party model is not authorized in the EFP as currently written, so NMFS would need to undertake revisions to add it to the EFP before 2021. Vessel owners would also need to solicit and contract with a third party provider. NMFS is prepared to revise the EFPs to allow vessel owners to hire third party EM service providers, including PSMFC, for 2021, if necessary. Hiring a third party provider would be more costly for vessel owners than if NMFS funded the video review costs, but would still be expected to be a cost savings relative to using a human observer, as detailed in the June 2019 final rule. Given the cost savings, NMFS believes it is likely the EFP will continue in one form or another in 2021 and therefore the EFP program would mitigate any negative economic effects of this proposed rule. NMFS is requesting public comment on whether this is a reasonable assumption and, therefore, whether the EFP can be expected to mitigate the potentially negative economic effects of this proposed rule.

Under the EM program, first receivers accepting landings from EM vessels would no longer be able to use an observer on the vessel to monitor offloads and would have to obtain a catch monitor for these offloads. This may result in increased monitoring costs for first receivers under the EM program. In addition, under the EM program first receivers are required to sort and dispose of any prohibited or protected species retained by EM vessels. First receivers already have such disposition requirements for landings

from Pacific whiting maximized retention trips under the current regulations, but EM would expand the existing whiting sorting and disposition requirements to landings from all EM trips beginning in 2021. Under this proposed rule, these additional costs would be postponed to 2022. However, because NMFS has maintained an EFP program since 2015 that allows vessels to use EM, NMFS believes that first receivers have already adjusted to the effects of these provisions under the EM EFP program, and therefore NMFS believes that this proposed rule will have no additional impact on first receivers relative to no regulatory action.

NMFS has already received applications from some prospective companies interested in obtaining an EM service provider permit for 2021. If the EM program is delayed through this proposed rule, any application received will be considered for permits for 2022 instead of 2021.

Summary of Proposed Regulations

This proposed rule would amend language in 50 CFR 660.603, which describes electronic monitoring provider permits and responsibilities, and 50 CFR 660.604, which describes vessel and first receiver responsibilities, to delay the acceptance of EM service provider and EM Authorization applications to 2021, thereby delaying implementation of the EM program to January 1, 2022. The proposed regulations were deemed by the Council to be consistent with the regulatory amendment and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through an August 10, 2020 letter from the Council Executive Director to the NMFS West Coast Regional Administrator.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section and in the **SUMMARY** section of the preamble.

This action impacts mainly commercial harvesting entities engaged in the groundfish limited entry trawl fishery. The SBA established criteria for business in the fishery sector to qualify as small entities. For Regulatory Flexibility Act purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it

is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. According to the most recent year of data from the Northwest Fisheries Science Center's Economic Data Collection Program, there were 85 active trawl vessels that participated in the trawl fishery with an average revenue of \$732,017 in 2018. Limited entry groundfish vessels are required to self-report size of business across all affiliated entities; of the businesses that earn the majority of their revenue from commercial fishing, none self-reported as large businesses. There were 14 licensed groundfish processors that received catch in the trawl fishery with an average total revenue of \$27,772,991 in 2018, three of which self-identified as small businesses. There are not yet any permitted EM service providers operating in the fishery, but four companies have submitted applications for permits. NMFS does not have any economic information on these EM service provider companies.

NMFS considers two criteria in determining the significance of adverse regulatory effects, namely, disproportionality and profitability. Disproportionality compares the effect of the regulatory action between small and large entities. This proposed rule is anticipated to affect all entities and is not expected to place any of the small entities described above at a significant competitive disadvantage relative to large entities. This proposed rule would delay implementation of the EM program to 2022. The EM program is expected to provide a cost savings and operational flexibility by providing vessel owners an alternative to human observers to meet monitoring requirements. As this action would delay implementation of the EM program, it would postpone these potential cost savings to vessel owners for an additional year. However, since 2015, NMFS has

been operating an EFP program to test EM, which has enabled participating vessels to use EM in place of human observers while NMFS collected information for developing and implementing the EM program. Most vessels interested in using EM have been able to participate in the EM program and benefit from the cost savings EM provides, regardless of business size. NMFS intends to maintain this EFP program through 2021, contingent on funding, and to allow additional vessels to join, which would mitigate the negative economic effects of delaying the EM program implementation through this proposed rule. Even if NMFS does not receive Federal funding to continue the EFP program, participating vessel owners could hire a third party provider to process and report their EM data, instead of hiring an observer. Although this third party model would be more costly for vessel owners than if NMFS funded the video review and reporting, it would still be expected to be less costly than using a human observer, as described in the preamble to this proposed rule. Therefore, we do not expect significant or disproportionate adverse economic effects on small entities from this proposed rule.

As discussed above, this proposed rule would delay implementation of the EM program which is expected to provide cost savings and operational flexibility to vessel owners. In this way, this proposed rule would postpone those cost savings for an additional year. However, as interested vessel owners can participate in the EM EFP program, NMFS does not expect this action to have significant adverse economic effects on profitability of fishing businesses.

Because this action is not expected to have a significant adverse economic effects on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: August 18, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C 7001 *et seq.*

2. In § 660.603, revise paragraph (b) introductory text to read as follows:

§ 660.603 Electronic monitoring provider permits and responsibilities.

* * * * *

(b) *Provider permits.* To be an EM service provider, a person must obtain an EM service provider permit and endorsement by submitting an application to the NMFS West Coast Region Fisheries Permit Office. NMFS has already accepted any EM service

provider application submitted as of [DATE OF PUBLICATION OF THE FINAL RULE]. NMFS will begin accepting additional applications for EM service providers permits May 1, 2021. A person may meet some requirements of this section through a partnership or subcontract with another entity, in which case the application for an EM service provider permit must include information about the partnership. An applicant may submit an application at any time. If a new EM service provider, or an existing EM service provider seeking to deploy a new EMS or software version, submits an application by June 1, NMFS will issue a new permit by January 1 of the following calendar year. Applications submitted after June 1 will be processed as soon as practicable. NMFS will only process complete applications. Additional endorsements to provide observer or catch monitor services may be obtained under § 660.18.

* * * * *

3. In § 660.604, revise paragraph (e) introductory text to read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(e) *Electronic Monitoring Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS has already accepted any EM Authorization application submitted as of the [DATE OF PUBLICATION OF THE FINAL RULE]. NMFS will begin accepting applications for EM Authorizations September 1, 2021. A vessel owner may submit an application at any time. Vessel owners that want to have their EM Authorizations effective for January 1 of

the following calendar year must submit their complete application to NMFS by October

1. Vessel owners that want to have their EM Authorizations effective for May 15 must submit their complete application to NMFS by February 15 of the same year.

* * * * *

[FR Doc. 2020-18456 Filed: 8/27/2020 8:45 am; Publication Date: 8/28/2020]